

1 JENNIFER STISA GRANICK (CA Bar No. 168423)  
2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
3 39 Drumm Street  
4 San Francisco, CA 94111  
Telephone: 415-343-0758  
Fax: 415-255-1478  
jgranick@aclu.org

5 JACOB A. SNOW (CA Bar No. 270988)  
6 AMERICAN CIVIL LIBERTIES UNION  
7 FOUNDATION OF NORTHERN CALIFORNIA  
8 39 Drumm Street  
9 San Francisco, CA 94111  
Telephone: 415-621-2493  
Fax: 415-255-1478  
jsnow@aclunc.org

10 *Attorneys for Plaintiff*

11  
12  
13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 AMERICAN CIVIL LIBERTIES UNION  
18 FOUNDATION,

19 Plaintiff,

20 v.

21 DEPARTMENT OF JUSTICE and FEDERAL  
22 BUREAU OF INVESTIGATION,

23 Defendants.

Case No. 3:20-cv-09284-CRB

**JOINT CASE MANAGEMENT  
STATEMENT**

24 The parties jointly submit this Case Management Statement pursuant to Civil Local Rule 16-9  
25 and the Standing Order for All Judges of the Northern District of California—Contents of Joint Case  
26 Management Statement.

1       1. Jurisdiction & Service

2       Plaintiff brought this action under the Freedom of Information Act (FOIA), 5 U.S.C.  
 3       § 552(a)(4)(B) and 28 U.S.C. § 1331. All parties have been served, and there are no issues concerning  
 4       personal jurisdiction.

5       2. Facts

6       On June 26, 2018, Plaintiff American Civil Liberties Union Foundation (“ACLU”) submitted a  
 7       FOIA request (“Request”) to the Office of Information Police (“OIP”) on behalf of the Office of the  
 8       Attorney General (“OAG”), the Office of the Inspector General (“OIG”), and the Federal Bureau of  
 9       Investigation (“FBI”) seeking the release of records related to the Electronic Device Analysis Unit  
 10       (“EDAU”), a unit of the FBI. The FBI divided the initial Request into five distinct requests. The FBI  
 11       offered “Glomar” responses to three of Plaintiff’s requests, refusing to even confirm or deny whether  
 12       responsive records exist at all. Two of these decisions were upheld on administrative appeal. The third  
 13       was remanded on administrative appeal, and the FBI is still processing that request. The FBI initially  
 14       closed the fourth request by stating that it was overbroad, a decision that was also overturned and  
 15       remanded on administrative appeal. The FBI is still processing that request. Plaintiff does not challenge  
 16       the response to the fifth request. These four subparts of the FOIA request to the FBI remain at issue in this  
 17       lawsuit.

18       On December 22, 2020, the ACLU filed this lawsuit. ECF No. 1.

19       Defendants Department of Justice (“DOJ”) and Federal Bureau of Investigation (“FBI”) filed their  
 20       Answer on January 28, 2021. ECF No. 17.

21       On January 22, 2021, OIG, a component of DOJ and a recipient of one of the FOIA requests at  
 22       issue in the above-captioned lawsuit, responded to Plaintiff’s FOIA request to OIG, reporting that OIG  
 23       did not locate any records responsive to Plaintiff’s FOIA request to OIG.

24       On February 19, 2021, OIP—the component of DOJ designated to process FOIA requests on  
 25       behalf of OAG, which received one of the FOIA requests at issue in this lawsuit—responded to Plaintiff’s  
 26       FOIA request, informing Plaintiff that no records responsive to Plaintiff’s FOIA request to OAG were  
 27       located.

1       On May 20, 2021, in order to allow the FBI to complete its searches regarding the four subparts  
 2 of the Request to FBI that remain at issue and to allow the parties to meet and confer regarding a path  
 3 forward in the above-captioned litigation, the parties jointly requested that the Court continue their initial  
 4 case management conference. ECF No. 21. On May 21, 2021, the Court ordered the case management  
 5 conference to be continued until July 9, 2021, and extended the deadline to submit the initial case  
 6 management conference statement to June 18, 2021. ECF No. 22.

7       On June 16, 2021, the parties filed a stipulation agreeing to dismiss Defendant DOJ insofar as it  
 8 stands in for its components, OIG and OIP (on behalf of OAG). ECF No. 23.

9       On June 18, 2021, the parties filed a Joint Case Management statement. ECF No. 25. On June 24,  
 10 the Court vacated the Case Management Conference set for July 9, 2021 and ordered a Joint Case  
 11 Management Statement to be filed by November 5, 2021.

12       FBI released records on or around September 9, 2021 and September 30, 2021.

13       The parties now submit this joint case management statement pursuant to Local Rule 16-2(e).

14       3. Legal Issues

15       At this juncture, this lawsuit raises several legal issues under FOIA:

- 16       • Whether Defendant FBI has conducted an adequate search for records responsive to  
       the Request, *see* 5 U.S.C. § 552(a)(3);
- 17       • Whether Defendant FBI improperly failed to grant Plaintiff's request for a limitation  
       of fees, *see id.* § 552(a)(4)(A)(iii); and
- 18       • Whether Defendant FBI has lawfully invoked FOIA exemptions to withhold or redact  
       responsive records or to refuse to confirm or deny whether responsive records exist,  
       *see id.* § 552(b).

23       4. Motions

24       There are no prior or pending motions. The parties anticipate that, if the matter is not resolved  
 25 through negotiations between the parties, it can ultimately be resolved on summary judgment.

1       5. Amendment of Pleadings

2       No party anticipates amending its pleadings. Plaintiff has agreed to dismiss OIG and OIP from this  
3 lawsuit, and the parties filed a stipulation agreeing to dismiss OIG and OIP on June 16, 2021. ECF No.  
4 23.

5       6. Evidence Preservation

6       The parties acknowledge their duty to preserve relevant materials in accordance with rules and  
7 case law applicable to FOIA actions.

8       7. Disclosures

9       The parties agree and stipulate pursuant to Federal Rule of Civil Procedure 26(a)(1)(A) that initial  
10 disclosures are not necessary, as this is a FOIA action for which there is no need to exchange such  
11 disclosures.

12       8. Discovery

13       To date, no discovery has been taken by any party. Plaintiffs do not currently anticipate  
14 propounding discovery, but Plaintiffs note that discovery may be appropriate in certain circumstances and  
15 reserve the right to seek discovery. *See, e.g., Carney v. DOJ*, 19 F.3d 807, 812–13 (2d Cir. 1994)  
16 (discovery appropriate where a party has provided “some tangible evidence that an exemption claimed by  
17 the agency should not apply or summary judgment is otherwise inappropriate”).

18       9. Class Actions

19       This is not a class action.

20       10. Related Cases

21       Counsel for the parties are unaware of any related cases before another judge of this Court.

22       11. Relief

23       Plaintiffs seek the relief set forth in their Prayer for Relief. *See* Compl. at 12, ECF No. 1.

24       12. Settlement and ADR

25       This case has been assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program.  
26 ECF No. 8. The parties have conferred about ADR processes in conformance with ADR L.R. 3-5. The  
27 parties respectfully submit that this case is not well-suited to ADR resolution, and that ADR is not likely  
28

1 to increase the likelihood of resolving this matter. The parties therefore request that the Court exempt this  
2 case from ADR.

3 13. Consent to Magistrate Judge For All Purposes.

4 Plaintiff declined assignment of this case to a magistrate judge for all purposes.

5 14. Other References

6 The parties agree that this case is not suitable for reference to binding arbitration or a special  
7 master, or reference to the Judicial Panel on Multidistrict Litigation.

8 15. Narrowing of Issues

9 FBI has informed Plaintiff that FBI has completed its release of all information FBI believes is  
10 releasable under the FOIA. Plaintiff is in the process of reviewing those disclosed documents. The parties  
11 have conferred, and intend to continue conferring, in an effort to reach agreement regarding any redactions  
12 in the disclosed documents, as well as FBI's position that the remainder of responsive documents are  
13 exempt from disclosure.

14 16. Expedited Trial Procedure

15 The parties anticipate that this case, as a FOIA matter, can be resolved on summary judgment. The  
16 expedited trial procedure is therefore inapplicable.

17 17. Scheduling

18 The parties have conferred regarding Defendant's processing of the Request and production of  
19 responsive records.

20 FBI maintains that, to the best of its present knowledge, it has disclosed all responsive and non-  
21 exempt documents. FBI anticipates categorically withholding all remaining records pursuant to  
22 Exemption 7(E). To the extent Plaintiff seeks additional records, FBI plans to review the remaining  
23 potentially responsive records. Any document that falls under Exemption 7(E) it plans to withhold in full.  
24 Any document not withheld in full under Exemption 7(E) would be segregated and released to the extent  
25 permissible under the FOIA. FBI estimates that processing of the remaining potentially responsive records  
26 would take somewhere between 33 and 65 months.

27 The ACLU is in the process of reviewing the documents disclosed to date. The parties continue to  
28 meet and confer about FBI's anticipated Exemption 7(E) assertion and about ways to reduce the volume

1 of potentially responsive records. The parties anticipate that they will be able to report to the Court any  
2 compromise resolutions regarding the anticipated Exemption 7(E) assertion, reductions to the volume of  
3 potentially responsive records, and updated processing estimates no later than January 10, 2022.

4 **18. Trial**

5 The parties anticipate that this entire case will be resolved on summary judgment, if the parties do  
6 not reach a negotiated resolution.

7 **19. Disclosure of Non-party Interested Entities or Persons**

8 As a governmental entity or agency, Defendant is exempt from the disclosure requirement of Civil  
9 Local Rule 3-15.

10 As set forth in Plaintiff's Civil Local Rule 3-15 statement filed on December 22, 2020, ECF No.  
11 2, counsel for Plaintiff certify that other than the named parties, there is no such interest to report.

12 **20. Professional Conduct**

13 The attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for  
14 the Northern District of California.

15 **21. Other**

16 None.

17 The parties submit this joint case management statement pursuant to Local Rule 16-2(e).

18  
19  
20 Dated: November 2, 2021

Respectfully submitted,

/s/ Jennifer Stisa Granick

21  
22 Jennifer Stisa Granick  
23 American Civil Liberties Union Foundation  
24 39 Drumm Street  
25 San Francisco, CA 94111  
26 Telephone: 415-343-0758  
27 Fax: 415-255-1478  
28 jgranick@aclu.org

29  
30 Jacob Snow  
31 American Civil Liberties Union Foundation of  
32 Northern California  
33 39 Drumm Street

1 San Francisco, CA 94111  
2 Telephone: 415-621-2493  
3 Fax: 415-255-1478  
jsnow@aclunc.org

4 *Attorneys for Plaintiff*

5 Dated: November 2, 2021

6 STEPHANIE M. HINDS  
7 Acting United States Attorney

8 /s/ Jevechius D. Bernardoni  
9 Jevechius D. Bernardoni  
10 Assistant United States Attorney

11 \**In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury  
12 that all other signatories have concurred in the filing of this document.*